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the mental anguish suffered because of the publicity of the conversion. *Harris v. Delaware, L. & W. R. Co.*, 72 Atl. 50 (N. J., Sup. Ct.).

Compensation for mental anguish inflicted on the plaintiff may be given whether the act of the defendant is a breach of contract or a tort. Under the general rule as to liability on a contract, it must appear, however, that such injury was in the reasonable contemplation of the parties when the contract was made. See 21 HARV. L. REV. 541. In personal torts redress is generally given, if at all, for any mental suffering resulting from the wrongful act. See 20 HARV. L. REV. 149. There are few cases involving rights in real or personal property where any question of these consequential damages is presented; but in an action of trespass for an unlawful ejectment compensation is generally given for any indignity suffered thereby. *Moyer v. Gordon*, 113 Ind. 282. And damages for mental anguish resulting from the disinterment of a body may be recovered in an action of trespass. *Bessemer Land & Improvement Co. v. Jenkins*, 111 Ala. 135. But as personal property is not of such a character that any sense of personal insult would naturally accompany its deprivation or disturbance, and since mental suffering is therefore improbable, such enhanced damages should not be allowed. This principle has restricted such recovery in actions for trespass to realty. *White v. Dresser*, 135 Mass. 150. Cf. 22 HARV. L. REV. 533. And it is evidently the ground for the distinctions taken in the cases. See 4 HARV. L. REV. 197.

DESCENT AND DISTRIBUTION — DEVOLUTION OF CHARITABLE TRUST PROPERTY ON TERMINATION OF TRUST. — A benefit society consisted of honorary members, who paid subscriptions but could derive no benefits, and benefited members who paid weekly contributions which entitled them to certain annuities. Only persons who had attended a certain school were eligible as benefited members. This school had been closed for over sixty years and only two benefited members survived. The surplus fund was claimed by these members and by the honorary members as a resulting trust. That part subscribed by the honorary members was claimed by the Attorney-General as a charitable trust. *Held*, that the whole fund, after payment of the annuities, belongs to the Crown as *bona vacantia*. *Braithwaite v. Attorney-General*, [1909] 1 Ch. D. 510.

Whether a society of this sort comes within the legal definition of a charity depends upon its purpose as determined by its rules. See *In re Clark's Trust*, 1 Ch. D. 497. Thus, where it is provided that the receipt of benefits shall be conditional upon the poverty of the recipient, the society is a charity. *In re Buck*, [1896] 2 Ch. 727. The funds may then be administered *cy-près*. *Hayter v. Trego*, 5 Russ. 113. But where the purpose is temporary, and those to be benefited are definite, there is a resulting trust for the benefit of the subscribers. *Re Trusts of the Abbott Fund*, [1900] 2 Ch. 326. See 14 HARV. L. REV. 235. Otherwise the funds will be treated as *bona vacantia*. *Cunnack v. Edwards*, [1896] 2 Ch. 679. In the principal case the society was not a charity; for the benefited members were legally entitled to annuities, irrespective of their poverty. But they had no further interests. And since under the statute the subscribers' contributions became the absolute property of the society, there could be no resulting trust. Clearly, therefore, the fund should go to the Crown.

EASEMENTS — MODES OF ACQUISITION — EXTENSION BY ACCRETION TO SOIL OF SERVIENT TENEMENT. — A public street was laid out over riparian land to high-water mark, the easement being secured by eminent domain proceedings. By gradual alluvial deposits the high-water mark was moved seawards. *Held*, that the land acquired by accretion at the end of the street is subject to the easement of the public to the changing high-water mark. *State v. Yates*, 71 Atl. 1018 (Me.).

That a right of way once acquired to navigable water shift with the water-line, is as desirable as that property once riparian remain so. A street dedicated to the public has been held to extend automatically over alluvial deposits,

on the theory that the donor intended a way to the navigable highway, whatever its bounds. *Hoboken Land, etc., Co. v. Mayor, etc., of Hoboken*, 36 N. J. L. 540. And the decision here seems sound in its averment that a street to a shifting water-mark was contemplated, and that allowance was made in the condemnation proceedings for the extension of the soil. No decisions were found in regard to accretion upon property subject to a private right of way; but it seems clear that the creation of rights by grant and covenant are subject to the same inferences as is their creation by dedication and eminent domain proceedings. *Cf. Lockwood v. New York, etc., Railroad Co.*, 37 Conn. 387. Easements, public or private, by prescription, present a harder case; for it is difficult to conceive of constructive adverse use of property which throughout the period of prescription was not in existence.

FEDERAL COURTS — JURISDICTION AND POWERS IN GENERAL — SUIT AGAINST STATE DISPENSARY COMMISSION. — The Legislature of South Carolina created a commission to wind up the affairs of the state liquor business. The complainants, who claimed for liquor sold to the state, sued the commission in the federal court for an accounting, an injunction, and a receivership. *Held*, that the suit is one against the state within the prohibition of the Eleventh Amendment. *Murray v. Wilson Distilling Co.*, U. S. Sup. Ct., Apr. 5, 1909. This decision reverses the decision of the lower court discussed in 22 HARV. L. REV. 289.

FEDERAL COURTS — RELATIONS OF STATE AND FEDERAL COURTS — EFFECT OF CONFORMITY STATUTE ON COMMON LAW RULES OF EVIDENCE. — Rev. Stat. U. S. 1878, § 721, enacts that the laws of the several states, except where the Constitution, treaties, and statutes of the United States otherwise provide, shall be regarded as rules of decision in trials at common law in the courts of the United States in cases where they apply. And § 858, after enumerating certain exceptions, adds that in all other respects the laws of the states shall be the rules of decision as to the competency of witnesses. *Held*, that whether the common law power of a court to compel a plaintiff to submit to a surgical examination be treated as strictly a matter of practice or as involving a question of evidence, in neither case is the federal court bound by the common law decisions of the highest court of the state within which it is sitting. *Chicago & N. W. Ry. Co. v. Kendall*, 167 Fed. 62 (C. C. A., Eighth Circ.).

Rev. Stat. U. S. 1878, §§ 721 and 858, have been construed to include state statutes as to evidence in civil trials. *Conn. Mutual Life Ins. Co. v. Union Trust Co.*, 112 U. S. 253, 254; *Butler v. Fayerweather*, 91 Fed. 458, 460. And there is some authority for treating decisions of the highest state court as equally binding with state statutes. *Stewart v. Morris*, 89 Fed. 290; see *Nashua Savings Bank v. Anglo-American, etc., Co.*, 189 U. S. 221, 228. But these holdings are based upon dicta or cases which deal solely with statutory rules of evidence. See *Ex parte Fisk*, 113 U. S. 713, 720. On the other hand, the federal courts, when presented on appeal with questions of evidence, do not consider state decisions as controlling. *Cf. New Jersey Steamboat Co. v. Brockett*, 121 U. S. 637, 649. The principal case argues that common law rules of evidence are the creation of the courts rather than "laws" within § 721, and that in the absence of statutes federal courts should be independent in this respect. *Cf. Baltimore & Ohio R. Co. v. Baugh*, 149 U. S. 368, 370. It is believed that on grounds of expediency this technical distinction is justifiable; for the great burden and delay to the federal judiciary otherwise necessary would far outweigh the inconvenience to the local bar under the present rule.

GENERAL AVERAGE — INTERESTS LIABLE TO CONTRIBUTION — WHAT LAW GOVERNS. — The master of a vessel chartered for a voyage from New York to Portugal borrowed money on the security of the freight, for necessary expenses, giving his draft therefor. The vessel became disabled and had to be towed from the Azores to Portugal, for which salvage service a large recovery was had in England. According to New York law the master's draft, or bottomry bond, is